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REF LON 00AC/LSC/2007/0347

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE-MATTER OF THE LANDLORD AND TENANT ACT 1985 SECTION  
27A and SECTION 20C

AND IN THE MATTER OF 56 GILDA COURT WATFORD WAY LONDON  
NW7 2QL

Applicant

Michael Browne

Represented by

In Person and assisted by Mr S  
Patel a litigation friend

Respondent

M and M Savant Limited

Represented by

Ms M C Bleasdale of counsel  
Instructed by Bude Nathan  
Iwanier solicitors

The Tribunal

Mr P Leighton LLB (Hons)  
Mr D Edge FRICS

Hearing Date

29<sup>th</sup> November 2007

Date of Decision

21<sup>st</sup> January 2008

## **Introduction**

- 1 By an application dated 7<sup>th</sup> September 2007 the Applicant seeks a determination of his liability to pay service charges for the years 2004-2007 in respect of the premises at 56 Gilda Court, Watford Way, London NW7 2QL ("the Property").under Section 27A of the Landlord and Tenant Act 1985 and for an order restricting the Respondent's right to recover the costs of the proceedings under Section 20C of the Act
- 2 Directions were given for the conduct of the application on 17<sup>th</sup> September 2007 and the matter was directed to be heard on 29<sup>th</sup> November 2007
- 3 The property is a two bedroom ground floor flat in a purpose built block of 6 flats built in about the 1950s. The block is one of five forming an estate in Watford Way London NW7 The Applicant holds under the terms of an under lease dated 4<sup>th</sup> May 1962 for a term of 80 years from July 1947. Having regard to the issues involved in the application the Tribunal did not consider it was necessary to inspect the block and neither party invited it to do so.

## **The Hearing**

- 4 At the hearing Mr Browne appeared accompanied by Mr S Patel a litigation friend and the Respondent was represented by Ms Bleasdale of counsel instructed by Messrs Bude Nathan Iwanier solicitors and accompanied by Mr Hoffmann of J S Estates the managing agents and Mr Lazer Bloch an insurance consultant of Primary Insurance Consultants Limited
- 5 At the hearing Mr Bloch gave evidence on behalf of the Respondent and was cross examined by Mr Browne and Mr Patel. Mr Browne gave evidence on his own behalf and was questioned by the Respondent's counsel and the Tribunal.

## **The Lease**

- 6 By Clause 2(6) the lessee covenants to pay a due proportion of the expenses of the block. Clause 1 of the lease (p 35) sets out the

obligation of the lessee to contribute to the costs of insuring the building and by Clause 4(4) the lessor covenants to "cause to be insured or insure and keep insured the building of which the flat forms part " to produce when required by the lessee the policy and the receipt for the insurance and to lay out the proceeds of the policy in reinstating any damage to the building.

### The Law.

7 The relevant law is to be found in Section 27A of the Landlord and Tenant Act 1985 whereby the Tribunal is required to determine the issue of recoverability of service charges on the basis of whether relevant costs have been reasonably incurred, whether the costs are themselves reasonable and the standard of the service provided.

8 By Section 20B of the Act it is provided

*"If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant then subject to subsection (2) the tenant shall not be required to pay so much of the service charge as reflects the costs so incurred"*

Subsection (2) provides an exception where a written notice is given within the 18 month period that the service charge will be demanded

9 With regard to the question of insurance it has been decided that the landlord has to demonstrate that the costs of insurance are "reasonably incurred". This does not mean that the landlord is obliged to obtain the lowest quotation but must obtain a quotation after testing the market and placing insurance within a range of reasonableness (see Forcelux Limited -v- AV Sweetman (2001) 2 EGLR 173)

### The Issues

10 The matters in dispute before the Tribunal related to the building insurance on the block for the years 2004/5,2005/6,2006/7 and 2007/8.the amounts claimed by the Respondent and disputed by the Applicant were as follows :-

2004/5	£362.28
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2005/6	£376.78
2006/7	£391.85
2007/8	£407.51

- 11 There were four grounds of challenge raised by the Applicant namely
- (a) whether the Respondent was obliged to insure under the lease
  - (b) whether the premium demands were all sent at the same time rather than on the dates when they were due
  - (c) whether the Applicant was being required to pay a disproportionate share within the block
  - (d) the reasonable costs of the insurance

### **The Evidence**

- 12 The first ground depended upon a construction of the leases and the Tribunal informed the Applicant early in the hearing that it seemed that the words in the lease clearly placed an obligation on the landlord to provide the insurance for the block to which he was required to contribute. The Applicant did not advance any argument as to why the clause did not bear that meaning and appeared to accept that there was an obligation on the landlord to insure.
- 13 The second issue related to the time at which the insurance demands were served on the Applicant. He maintained that all four years were served on him at the same time in July 2007. He stated that he had not received any demands in 2004, 2005 or 2006. He had received service charge demands during this period and these had been paid with the help of a charity
- 14 Mr Browne explained to the Tribunal that since the death of his wife he had been very ill and was unable to work. He produced a medical report stating that he had suffered a long period of anxiety, depression and recurrent migraine. He also suffered from Hepatitis C and had suffered a long period of drug addiction. This had affected his eye sight and had made it difficult for him to read documents.
- 15 Mr Bloch in his witness statement stated that invoices were sent out in May each year to the leaseholders and he produced a schedule showing that for the years in question each of the leaseholders except

Mr Browne had paid the premiums. He also produced the certificates of insurance which he said were sent to the leaseholders within a month or so of the renewal dates of the policy and that these would have been sent out in 2004, 2005, 2006 and 2007.

16 Mr Bloch admitted that he had not sent the notices personally and that they had been sent by Mr Vino one of his employees but he had spoken to Mr Vino who confirmed that they had been sent out each year. Mr Vino however, was not called to give his evidence about it.

17 Mr Bloch further gave evidence that Mr Browne had made claims under the insurance policy in May 2003 and January 2005 in which he had been paid out by the insurance company. and that the details of the policy and the insurers' contact details would have been on the demand or the certificate. Mr Browne accepted that he had made the claims but denied that he had received the documents and said he had telephoned the insurers using a telephone number which he had.

18 Mr Bloch stated that when making the claims Mr Browne had telephoned Mr Vino who had informed him that the claims could only be made if cover was in force and informed him of the arrears.

19 In relation to the third issue Mr Browne complained that he was being required to pay a sum which was very much greater than that which was being charged to other tenants and he cited the instance of the leaseholder at Flat 17.

20 Mr Bloch produced a schedule showing the amounts charged to each leaseholder and pointed out that at the time of purchase Mr Browne's solicitor insisted that the cover under the policy be increased to £65,000 (see page 78) and further that the resident of Flat 17 had previously been paying the same but had recently been undercharged as an administrative error by the insurers in 1999. The flat would be brought into line in the future.

21 With regard to the fourth issue Mr Bloch gave evidence that the insurance was placed with Axa which was one of only a few insurance companies who were prepared to provide this type of cover. The cover was taken out on a three year basis and renewed in 2001, 2004 and 2007. Axa had attempted to increase the premiums on the policy on

occasions during the term and Primary Insurance had approached other insurers to see if they were prepared to undertake the insurance. Norwich Union was prepared to offer cheaper cover in 2007 but Axa were approached by the brokers and agreed to keep the rates at the same level. Mr Bloch said the rates have been held in line since 1999, and that a marketing exercise is undertaken every 3 years.

22 Mr Browne produced details of a policy which he had taken out with Tesco in 2007. This was a Home Insurance Policy for the flat and the premium was £224.70. This policy had been suggested to him by Mr Patel who had a similar policy with Tesco for insuring his house, which was much cheaper than the rate Mr Browne was required to pay. In cross examination of Mr Browne however it was established that the Tesco policy did not cover the common parts of the block, and was dependent upon the terms of disclosure in the proposal, whereas the landlord's policy was unrestricted

### **The Tribunal's Decision**

23 The Tribunal was satisfied on the clear words of the lease that the landlord had a duty to insure and was entitled to recover the cost of insuring from the leaseholder. It did not appear to the Tribunal that this was being seriously contested by the Applicant at the conclusion of the hearing

24 With regard to the question of the delivery of the demands for payment the Tribunal concluded on the balance of probabilities that the demands had been served. The evidence of Mr Bloch outlining the system was supported by the schedule of payments from other tenants in the block. Although there had been some evidence about an incident involving a postman destroying mail this could not and did not cover the four year period over which the demands were sent

25 Further the Applicant had been ill for some time and his eyesight had suffered considerably. He had had difficulty managing his affairs and the Tribunal concluded that he may well have overlooked the insurance demands. Even if, however, they had not been delivered, the Tribunal concluded that the landlord had taken all reasonable steps to notify the

Applicant and had succeeded in notifying other tenants in the block. The Tribunal was not prepared to find that the notices had not been served on the Applicant although they had been served on and received by other tenants.

- 26 In addition if the Applicant had made claims during this period it is likely that he would have been aware of the fact that he was on cover and had received insurance documents during this period. The Tribunal does not therefore find that Section 20B of the Act applies and there is no restriction on recovery on this ground.
- 27 With regard to the level of contribution the Tribunal is satisfied that the Applicant is being charged in accordance with the requirements of cover stipulated by his own solicitors Osbournes at the time when he purchased the lease in July 1989. The Tribunal is also satisfied that the leaseholder of Flat 17 is being undercharged arising from an administrative error and that this should not in any way affect the Applicant's liability
- 28 Finally the Tribunal accepts the evidence of Mr Bloch that the insurance cover was reasonably incurred. Regular attempts have been made over the years to test the market and the present insurers have held the rates steady over the last 9 years. The increases for the years in question are relatively small and appear to be reasonable to the Tribunal.
- 29 The Tesco policy is obviously much more favourable to the Applicant than the landlord's policy although the landlord's policy has some benefits which the Applicant's policy does not have.e.g insurance of the common parts and liability which is not based on questions of disclosure. as it is a block policy.
- 30 The Respondent's policy is bound to be more expensive than a policy which the Applicant could obtain for himself but nonetheless the Tribunal is satisfied that it is within the range of market prices for such policies and is probably better value than many on the market.
- 31 Accordingly the Tribunal finds that the Respondent is entitled to recover the premiums demanded for the years 2004,2005,2006 and 2007,and they are payable by the Applicant

**Section 20C costs.**

32 The Tribunal has considered clause 2(16) of the lease which covers the question of costs recoverable on a forfeiture and considers that such a clause does not cover the situation where a leaseholder makes an application to a leasehold valuation tribunal for a determination of reasonableness of service charges.

33 The Tribunal is not persuaded that any other clause is wide enough to cover the recoverability of costs from the service charge account. . If the lease had been wide enough to cover such a claim the Tribunal would not in the exercise of its discretion have disallowed costs under Section 20C as it considers that the landlord has acted reasonably and has been successful on the issues determined.

**Reimbursement of Fees**

34 As the Applicant has been unsuccessful on all points in the application, the Tribunal does not consider it reasonable that the Respondent should reimburse him the costs of the application

**Conclusion**

35 The Respondent is entitled to recover the costs of insurance as claimed in the sum of £362.28 for the year 2004, £376.78 for the year 2005, £391.85 for the year 2006 and £407.51 for the year 2007.

36 Further the Tribunal makes no order with regard to the disallowance of costs under Section 20C of the 1985 Act and further makes no order for reimbursement of the fees paid by the Applicant

Chairman

Peter Leighton

Date

21<sup>st</sup> January 2008

